

MICHAEL J. VERBLE ET AL.

IBLA 74-273

Decided September 12, 1974

Appeal from decision (Colorado Contest No. 519) by Colorado State Office, Bureau of Land Management, declaring mining claim null and void.

Reversed in part.

Contests and Protests: Generally--Mining Claims: Contests--Rules of Practice:
Government Contests

Where a contestee makes a timely response to a government complaint which can reasonably be construed as a general denial of the allegations contained in the complaint, the response may be considered a sufficient answer within the contemplation of the regulations. The allegations cannot then properly be taken as admitted and the mining claim will not be declared null and void without a hearing.

Mining Claims: Contests--Rules of Practice: Government Contests

Where a mining claimant named as a party in a contest and served with a copy of the complaint does not file an answer to the complaint, the allegations in the complaint will be taken as admitted. The defaulting contestee cannot rely on an answer filed by a co-claimant when such answer never purported to be on the defaulting contestee's behalf.

APPEARANCES: Robert M. Laura, Esq., of Colorado Springs, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Michael J. Verble and Cora A. Verble have appealed from a decision of the Colorado State Office, Bureau of Land Management, dated March 11, 1974, which declared the Jewelers and Jewelers No. 1 placer mining claims null and void.

The Government's contest complaint was served on each of the contestees on March 10, 1973, charging among other things that no valuable mineral deposits had been discovered within the limits of the claims. The complaint pointed out that unless each of the contestees filed an answer within 30 days after service of the complaint the allegations would be taken as admitted and the case decided without a hearing, citing 43 CFR Part 4, Subpart E.

Contestees Fred C. and Lillian Zerbe made no response to the complaint. Contestees Michael J. and Cora A. Verble responded within the 30 day period by letter of April 7, 1973, received by the Bureau of Land Management April 10, 1973, in which they stated:

In answer to complaint, (Contest #519) involving Jewelers and Jewelers #1 Placer Mining Claims.

NOTICE OF APPEAL.

We, Michael J. and Cora A. Verble, request Appeal based on Item #5 of The Complaint, and furthermore contend that we do have a valid mining claim and request The Complaint against us be withdrawn.

The State Office found that this response by the Verbles was inadequate to constitute an answer. The State Office held that the allegations of the complaint are taken as admitted by each of the contestees and declared the mining claims null and void.

The rules of practice of the Department governing procedures in contest proceedings provide that, within 30 days after service of the complaint, a contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint. 43 CFR 4.450-6. The rules provide further if an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing. 43 CFR 4.450-7(a).

From our reading of the Verbles' letter of April 7, 1973, we find it was their obvious intent to make a timely answer to the Government's complaint. Although the Verbles, acting without the benefit of legal counsel at that time, erroneously referred to a

"notice of appeal," they also stated that it was "in answer to complaint (Contest #519)." It is clear their intent was to take exception to the grounds for the contest.

They referred specifically to item #5 of the complaint which sets forth the grounds for the contest. They also asserted the validity of their mining claim. Under the circumstances, we find claimants' statements can reasonably be construed as a general denial of the allegations set out in the complaint. Consequently, the Verbles' April 7 letter may properly be considered a sufficient answer within the contemplation of the regulations.

However, the record shows that Fred C. and Lillian Zerbe made no response to the complaint. The April 7 letter did not purport to speak on their behalf. Therefore, they may not rely upon the timely answer of the Verbles as their own. United States v. Zweifel, 11 IBLA 53, 80 I.D. 323 (1973). As to those two contestees, the allegations in the complaint were properly deemed admitted. Since they did not appeal, the State Office decision became final as to them. 43 CFR 4.411.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from as to Michael J. and Cora A. Verble is reversed and remanded for further hearing.

Martin Ritvo
Administrative Judge

We concur:

Joseph W Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

